upa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.2031 OF 2005
ALONG WITH
SUMMONS FOR JUDGMENT NO.673 OF 2005

ABCD Drums and Barrels Industries)..Plaintiff

Versus

Golden Chemicals Pvt. Ltd.)..Defendants

Ms.Sonia S. Miskin for the Plaintiff.

Mr.J.P. Sen i/b.Federal & Rashmikant for the Defendants.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 20TH MARCH 2006

P.C.:

. The Suit has been filed for recovery of a certain sum from the Defendants. Summons for Judgment has been taken out by the Plaintiff. However, it appears that the Defendants filed a Reference before the Board for Industrial and Financial Reconstruction (BIFR) on 21st September 2002 under Section 15(1) of the Sick Industrial Companies Act, 1958 (Special Provision). In fact, the Defendants have informed the Plaintiff of this fact prior to the Plaintiff filing the present Suit.

2. The learned Advocate for the Defendants relies on the judgments in the case of *In re Karam Chand Thapar*

& Bros. Ltd. vs. *C.J.Telatine Products Ltd.*, **1992 (3) Bom.C.R. 14**, *M/s.Shree Mahesh Textiles Pvt. Ltd.* vs. *M/s.Mafatlal Engineering Industries Limited*, **1994 (3) Bom.C.R. 281**, *Century Textiles & Industries Ltd.* vs. *Avinash Goel and another*, (**Summons for Judgment No.1078 of 1998**) and *Indian Link Chain Mfrs. Ltd.* vs. *M/s.Golden Chemicals Pvt. Ltd.*, (**Company Petition No.497 of 2004**) in support of his submission that the Plaint must be returned as it has been filed after the institution of the proceedings before the BIFR.

3. Faced with this difficulty, the learned Counsel appearing for the Plaintiff seeks leave to withdraw the Suit with liberty to file a fresh Suit, if necessary, after the proceedings before the BIFR are complete.

4. Suit allowed to be withdrawn with liberty as prayed for.

5. In view of the fact that the Suit has been withdawn, nothing survives in Summons for Judgment No.673 of 2005 and the same is disposed of accordingly.

6. Refund as per Rules.

7. Certified copy expedited.